

(1994) 06 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 18696 of 1992

Southern Structurals Staff Union

APPELLANT

Vs

Management of Southern Structurals Ltd. and another

RESPONDENT

Date of Decision : 15-06-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19(1), 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (1994) 81 CompCas 389 : (1994) 2 LLJ 1243 : (1994) 2 LW 595 :
(1994) WritLR 791

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : N. Jothi and R. Krishnamurthy, for the Respondent

Judgement

Jayasimha Babu, J.—Can the State be compelled not to disinvest from a Government company at the instance of the employees of the

company either on the ground that the industrial unit though presently sick is capable of being made viable with the aid of further substantial

investments by the State, or on the ground that such disinvestment would deprive the employees of the rights conferred by articles 14 and 16 or of

the right to approach this court under article 226 or the Supreme Court under article 32 - is the question that arises for consideration in this petition

filed by the Southern Structurals Staff Union representing 250 of the 1600 workmen employed in Southern Structurals Limited, respondent No. 1,

in this petition.

2. Southern Structurals Limited which was incorporated in 1956 as a public limited company was under private management and was closed in

1970 after it became sick. In 1971, the State Government of Tamil Nadu stepped

in and took over the management of the company with a view to ensure the continued functioning of the industrial units owned by the company. In 1978, the State acquired over 99 per cent. of the shares of the company and the company became a Government company. The company is now a wholly owned State Government company doing business in various diversified activities such as executing project contracts, fabrication and erection work for steel plants, coal fields and electricity boards.

3. The company is managed by a board of directors drawn mostly from the Indian Administrative Service and the company has been making losses continuously since 1971 except for a brief period during 1983-84. The accumulated losses of the company as on December 31, 1993, was Rs. 37.36 crores, being more than twice the amount of the authorised capital of Rs. 16 crores and paid-up capital of Rs. 12.81 crores. The loss incurred in 1990-91 was Rs. 7.9 crores. The magnitude of the loss was greater in 1992-93, the loss being 8.71 crores which is more than two-thirds of the entire paid-up capital of the company.

4. On account of the accumulated losses exceeding its net worth as on March 30, 1991, the board of directors of the company made a reference u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, which came to be registered as Reference No. 610 of 1992. The State Bank of India was appointed as the operating agency to prepare a scheme for rehabilitation of the company. The said operating agency, as also the financial institutions, IDBI, IFCI, ICICI and the commercial banks, have declined to extend any further financial assistance to this company as large amounts advanced by them in earlier years and the interest accrued thereon still remains outstanding.

5. The chartered accountants, who carried out a techno-economic viability study of the company for the operating agency have opined that the company is capable of being revived in the public sector and made viable if :

(a) The Government of Tamil Nadu is willing to give the financial concession/ assistance and make structural changes in the management of the company, as proposed in the scheme.

(b) The Central Government grant the various reliefs and concessions as mentioned in this scheme.

(c) The employees of the company are willing not only to agree for non-revision

of pay structure for a period of five years but also increase productivity and comply with the other matters mentioned in this scheme.

(d) The term-lending financial institutions are willing to give the concessions as mentioned in this scheme.

(e) The commercial banks are willing to continue to grant the working capital limits presently enjoyed by the company and consider such need

based increases as may become necessary in future having regard to inflationary and other increases.

6. During the pendency of this petition, the State Government by their G.O. dated September 6, 1993, extended the following concessions to the company.

(a) Outstanding ways and means advance of Rs. 17.5 crores as on March 31, 1992, has been written off.

(b) Arrears of interest of Rs. 5.85 crores on the ways and means advance as on March 31, 1992, has been written off.

(c) Arrears of guarantee commission as on March 31, 1992, amounting to Rs. 72 lakhs has been written off.

7. Even after substantial concessions having been extended by the State, as stated by the Deputy Secretary, Industries Department, in his counter-

affidavit dated April 27, 1994, the operating agency has drawn up a draft rehabilitation programme at a cost of Rs. 13.65 crores which assumes

that the entire cost of rehabilitation has to be met by the State Government alone by way of a rehabilitation loan.

8. The rehabilitation of the company is thus possible only by further infusion of taxpayers' monies, which have already been utilised in generous

measure to grant ways and means advances to the company, year after year, as can be seen from the figure furnished in the counter-affidavit of the

deputy secretary to the State :

(Rs. in crores)

Up to 1988-89 4.50

1989-90 3.00

1990-91 6.00

1991-92 6.00

1992-93 4.50

1992-93 1.00 (for VRS)

1993-94 5.50

1993-94 1.20 (for VRS)

9. In this background, if the Government has decided to disinvest from the company and thereby shed this burden on the State exchequer, such a decision, far from being regarded as mala fide or arbitrary, can only be regarded as eminently reasonable.

10. The decision to disinvest has not been taken in a hurry, but after careful consideration at a sufficiently high level in the Government, as seen

from the averments made in the counter-affidavits filed by the respondents. A committee appointed by the State Government in the year 1988,

when the State was under President's rule, comprising retired and serving senior officers, to study the viability and usefulness of Government

controlled corporations, had opined that it was not desirable for the Government to run this company and that efforts may be made to transfer the

same to any other public sector company. A final decision was deferred to enable a popularly elected Government to consider this issue. Efforts

made in the meanwhile to identify a public sector unit with which this company could be merged proved unsuccessful.

After the assumption of power by the popular Government this matter was considered by the State Cabinet in 1990, and in 1991, the proposal for

disinvestment was approved in principle. That decision was affirmed in 1992 and was conveyed to the company by the Government's letter dated

April 20, 1992, which is impugned in this petition.

11. While in this petition it is alleged that a decision to privatise was taken in a hurry when the popular Government was not in power, it is now

seen that successive popular Governments concurred with the recommendations made while the State was under President's rule, viz., that the

Government disinvest from this company. The obvious drain on the limited amount of State's revenues at a time when funds are badly needed for

funding such basic necessities as primary education and health care, fully justified the decision to disinvest. The State, further, has not shown itself

to be capable of running this business enterprise on sound commercial principles and continued State ownership is not an imperative necessity on

account of security and like considerations.

12. Sri R. Krishnamurthy, the learned Advocate General appearing for the respondents, submitted that the decision to disinvest, being a policy

decision of the State, the same was not amenable to judicial review. There is considerable force in this submission. Normally, the court will not sit

in judgment over issues of economic policy, unless such policy is violative of constitutional or statutory provisions. Mala fide or arbitrary decisions

in the guise of policy will, however, remain open to judicial scrutiny. Whether the policy formulated is the best policy or is a wise policy is not a

matter for decision by the court. In this context, it is useful to set out the following observation of the Supreme Court in the case of Premium

Granites and Another Vs. State of Tamil Nadu and Others, :

It is not the domain of the court to embark upon the uncharted ocean of public policy in an exercise to consider as to whether a particular public

policy is wise, or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities, as

the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision

infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.

13. Sri Fenn Walter, learned counsel for the petitioner, however, submitted that in the event of disinvestment being effected, the employees of this

company would lose valuable rights of being the employees of the State Government or enjoying a status comparable to that of Government

servants with the concomitant right to the protection of articles 14 and 16 of the Constitution enforceable through the High Court or the Supreme

Court by invoking articles 226 or 32 respectively, and, therefore, are entitled to seek a direction to the State not to disinvest from this company.

The argument is at first sight attractive but does not withstand closer scrutiny.

14. The argument that the employees of this Government company are Government servants is plainly untenable. They do not hold any civil posts.

Their employer is not the Government. The Government does not appoint them; has no disciplinary jurisdiction over them; and has no power to

dismiss or remove them from service. The Government is not liable to pay their salaries or to provide them with work. The employees of the

company are employed by a juristic person - the company registered under the

provisions of the Companies Act. The claims of the employees can only be against the employer company and not its shareholders, even if the shareholder is the Government and the bulk of the shares are held by the Government. That employees of the Government companies do not hold civil posts and are not entitled to invoke article 311 of the Constitution is well-settled by the decision of the Supreme Court in the case of Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., . The words "other authorities" in article 12 of the Constitution, however broadly interpreted, does not erase the juristic personality of the Government company.

15. The submission that in order to enable the employees to invoke article 14 or article 16 and to approach the High Court or the Supreme Court directly by invoking article 226 or article 32, the Government is bound to retain its ownership of the bulk of the shares in this company forever is devoid of any force.

16. The protection of article 14 is available to all and is not confined to employees of the State. The limitations placed by article 16 on the State with regard to employment under the State is not intended to compel the State to provide employment under it to all who seek such employment or retain all persons presently in its service in order to enable such persons to claim the benefit of article 16.

17. Employment under the State is not a precondition for approaching the High Court or the Supreme Court. All industrial workers have a right to approach the Labour Court or Industrial Tribunals for adjudication of their rights subject to the limitations contained in the Industrial Disputes Act.

Like all citizens industrial workers also have the right to approach civil courts for redressal of their wrongs. The decisions rendered by the civil, labour and industrial courts or tribunals are open to challenge before the High Court and the Supreme Court in appropriate proceedings. Actions of the Government or other authorities performing any public duty are amenable to correction in proceedings under article 226. By reason of the disinvestment, employees do not lose their right to seek redressal through courts for any wrongs done to them.

18. The employees have no vested right in the employer company continuing to be a Government company or "other authority" for the purpose of

article 12 of the Constitution of India. Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with the employees having commenced work under a private employer and while on the verge of losing employment, being rescued by the State taking over the company, the employees cannot claim any right to decide as to who should own the shares of the company. The State which invested of its own volition, can equally well disinvest. So long as the State holds the controlling interest or the whole of the shareholding, employees may claim the status of employees of a Government company or "other authority" under article 12 of the Constitution. The status so conferred on the employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment.

19. Public interest is the paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and the jobs of those employed therein, the Government can, in the public interest, with a view to reducing the continuing drain on its limited resources, or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilising the funds needed for running the Government, disinvest from the public sector companies. Article 12 of the Constitution does not place any embargo on an instrumentality of the State or "other authority" from changing its character.

20. It was also argued for the petitioner that the employees are likely to suffer diminished emoluments or loss of employment altogether in the event of disinvestment and, therefore, the proposed disinvestment is violative of article 19(1)(g) of the Constitution.

21. As observed by the Supreme Court of India in the case of Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344 ; [1981]

59 FJR 237 :

The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. If the workers are retrenched, consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies under the industrial laws. But the point to be noted is that the closure of an

establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by article 19(1)(g) of the Constitution. Supposing a law was passed preventing a certain category of workers from accepting employment in a fertilizer factory, it would be possible to contend then that the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them, though undoubtedly it will not be easy, to find other avenues of employment as industrial workers. Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. Even under article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under article 19(1)(g) than can a Government servant complain of infringement on the termination of his employment on the abolition of his post. The choice and freedom of workers to work as industrial workers is not affected by the sale. The sale may, at the highest, affect their locus but it does not affect their locus to work as industrial workers.

22. The petitioners' right to work as industrial workers is not affected by the proposed disinvestment. Disinvestment does not mean automatic closure of the company. One of the objects of disinvestment, as stated by the respondents, is to bring in a dynamic and capable entrepreneur who can run the company on a sound commercial basis. Even if the company were to be closed, the petitioners would be governed by the provisions relating to closure under the Industrial Disputes Act. In the event of some of the workmen being retrenched, such retrenchments would also be governed by the provisions of the industrial law. As observed by the Supreme Court, though it may not be easy to find alternate employment, nevertheless, the rights of the petitioner to work as industrial workers in any other industry is not in any way affected even if the company or the industry is closed. Therefore, the argument based on article 19(1)(g) of the

Constitution is misconceived.

23. In the affidavit filed on behalf of the State, it has been made clear that the State continues to be concerned with the welfare of the workers

notwithstanding the proposed disinvestment. I have no doubt that the State will take such measures as are possible within the limits of its resources

to help the employees of this company.

24. This petition was taken up for hearing by consent of parties, when the application for vacating stay came up for consideration, as both parties

were desirous of an early final decision on the merits of the case.

25. For the reasons given above, this writ petition is dismissed. In the circumstances of the case, no costs.